

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application by Xcel
Energy for a Route Permit for the
Hampton-Rochester-La Crosse 345-kV
Transmission Line Project

**ORDER ON MOTION REGARDING
FINAL ENVIRONMENTAL IMPACT
STATEMENTS AND MOTION TO
EXTEND INTERVENTION DEADLINE**

This matter came before Kathleen D. Sheehy, Administrative Law Judge, on the June 9, 2011, motion of NoCapX 2020 and United Citizens Action Network (UCAN) to (1) include in this docket the final environmental impact statement (FEIS) prepared by the Department of Commerce; (2) establish in this docket a comment period for the FEIS; and (3) include in this docket the EIS being prepared by the Rural Utilities Service/US Department of Agriculture. The OAH record on these motions closed on June 13, 2011, upon receipt of a response by the Applicant.

NoCapX and UCAN also filed a motion on June 17, 2011, to extend the time for intervention in this matter to June 30, 2011, for landowners who recently received notice of an alternative route alignment near the intersection of US Hwy 52 and County Road 19 in Cannon Falls. No party responded to this motion, and no person sought to intervene by the time of filing of this Order on June 30, 2011.

Carol Overland, Attorney at Law, P.O. Box 176, Red Wing, Minnesota 55066, appeared for NoCapX 2020 and United Citizens Action Network (U-CAN).

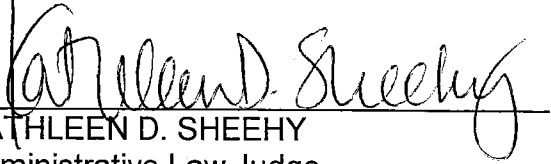
Lisa M. Agrimonti, Briggs and Morgan, PA, 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, appeared for Northern States Power Company, d/b/a/ Xcel Energy (Applicant).

Based upon the record, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

ORDER

The motions filed by CapX 2020 and UCAN are DENIED.

Dated: June 30, 2011


KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

In this matter Xcel Energy seeks a route permit for 90 miles of 345 kV high-voltage transmission line (HVTL) and 15 miles of 161 kV HVTL to be located in Dakota, Goodhue, Olmsted, and Wabasha counties in Minnesota. The line will cross the Mississippi River and ultimately terminate near La Crosse, Wisconsin. The evidentiary hearing in this docket concluded on June 24, 2011. The briefing schedule set at the conclusion of the hearing provides for final responsive briefs to be filed by September 7, 2011.

The process of scoping, drafting, and finalizing an Environmental Impact Statement (EIS) in the permitting of a high-voltage transmission line (HVTL) is governed by the Power Plant Siting Act, Minn. Stat. Chapter 216E, and Minn. R. Chapter 7850. The Commissioner of the Department of Commerce is responsible for the production of the draft and final environmental impact statements.¹ The rules specifically provide that a contested case hearing must be held on route permitting issues after the Draft EIS is prepared.² There is no provision in Chapter 7850 for receipt of public comments on a Final EIS. After the Final EIS has been published, the Public Utilities Commission makes a determination as to its adequacy,³ and that determination is separate from and independent of the Commission's final decision on a route permit application.⁴ The Commission is obligated to make a final decision on the route permit application within 60 days after receipt of the report of the administrative law judge and within one year after the commission's determination that an application is complete.⁵

During the first prehearing conference in this matter, the Department indicated that an EIS being performed by the Rural Utility Service/U.S. Department of Agriculture (RUS/USDA) and another being performed by the State of Wisconsin would likely be completed during May 2011, and the Department proposed a schedule with this target date in mind.⁶ Because these studies were being conducted independently of the route permitting process, however, the Administrative Law Judge declined the request of NoCapX 2020 and UCAN to establish deadlines in this contested case that were tied to the completion of either the federal EIS or the Wisconsin EIS.⁷

¹ Minn. R. 7850.2500, subp. 1 (2009); Minn. Stat. § 216E.03, subd. 11 (2010). All references to Minnesota Rules are to the 2009 edition; all references to Minnesota Statutes are to the 2010 edition.

² Minn. R. 7850.2600, subp. 1.

³ Minn. R. 7850.2500, subp. 10.

⁴ Minn. R. 7850.2700, subps. 1 & 2.

⁵ Minn. R. 7850.2700, subp. 1.

⁶ The RUS/USDA is conducting the EIS because Dairyland Power Cooperative, a potential investor in the project, has requested financing through the RUS.

⁷ First Prehearing Order ¶ 6 & n. 4 (Sep. 1, 2010).

In addition, NoCapX 2020 and UCAN similarly advocated, during the first prehearing conference, that the Administrative Law Judge should establish a deadline in this docket for public comments on the Final EIS. The Administrative Law Judge declined this request as follows:

The Administrative Law Judge has not included a deadline for submission of public comment on the final EIS, as advocated by No CapX 2020 and U-CAN. The EIS process is conducted by the Commissioner of the Department of Commerce, independently of the route permitting process. And although a ten-day comment period is required under 4410.2800, subp. 2, that rule chapter is not applicable to the preparation or consideration of an EIS for a high-voltage transmission line except as provided in Minn. R. 7850.1000 to 7850.5600. See Minn. R. 7850.2500, subp. 12.⁸

The Department of Commerce published a Draft EIS in March 2011, and it held public information meetings on April 12-14, 2011, in Cannon Falls, Pine Island, and Plainview to take comments. The comment period for the Draft EIS closed on April 29, 2011; the Department intends to incorporate the public comments received into the Final EIS, which it plans to file for consideration in this docket sometime in July 2011.

NoCapX 2020 and United Citizens Action Network (UCAN) filed renewed motions on June 9, 2011, to (1) include in this docket the Final EIS prepared by the Department of Commerce; (2) establish in this docket a comment period for the Final EIS; and (3) include in this docket the EIS being prepared by the Rural Utilities Service/U.S. Department of Agriculture (RUS/USDA). As noted above, the Department of Commerce intends to file the Final EIS in this docket, and it will be available to the parties before submission of their briefs. The adequacy of the Final EIS, however, is not an issue in this contested case. The motion seeking to require inclusion in this docket of the Final EIS is both unnecessary and legally unsupported.

With regard to the motion to establish a comment period for the Final EIS and to ensure that no decision is made until the federal EIS has been completed, the moving parties have failed to present any new or different argument since these matters were addressed in the First Prehearing Order. Chapter 7850 provides detailed guidance regarding receipt of public comment on the Draft EIS, but it contains no provision for receipt of public comment on the Final version.

The moving parties argue that the more general provisions of MEPA, and the rules adopted pursuant to MEPA, govern the conduct of an EIS in this case. MEPA sets out the environmental review requirements applicable to all types of proposed actions that may adversely impact the environment, including, for example, underground mines, petroleum refineries, paper mills, highway

⁸ First Prehearing Order ¶ 6 n. 5 (Sep. 1, 2010).

projects, and solid waste disposal facilities. The Environmental Quality Board adopted rules pursuant to Minn. Stat. § 116D.04, subd. 5a, establishing which governmental units are to be responsible for the environmental review of particular proposed actions and how the review is to take place. The rules established under this authority explicitly provide that, for the construction of high voltage transmission lines, the environmental review "shall be conducted" according to the PUC's rules for environmental review in a certificate of need proceeding (Minn. R. 7849.1000 to 7849.2100) or in a route permit proceeding (Minn. R. 7850.1000 to 7850.5600).⁹ Minn. R. 4410.2800, subp. 2, which requires a public comment period for a final EIS in other circumstances, is simply not applicable here.¹⁰

With regard to inclusion of the federal EIS in this record, the moving parties have cited to Minn. R. 4410.3900 for the proposition that the federal EIS should be a part of this record before any decision is made. The rule provides:

Subpart 1. Cooperative processes. Governmental units shall cooperate with federal agencies to the fullest extent possible to reduce duplication between Minnesota Statutes, chapter 116D, and the National Environmental Policy Act, United States Code 1976, title 42, sections 4321 to 4361.

Subp. 2. Joint Responsibility. Where a joint federal and state environmental document is prepared, the RGU and one or more federal agencies shall be jointly responsible for its preparation. . . .

Subp. 3. Federal EIS as draft EIS. If a federal EIS will be or has been prepared for a project, the RGU shall utilize the draft or final federal EIS as the draft state EIS for the project if the federal EIS addresses the scoped issues and satisfies the standards set forth in part 4410.2300.

The record reflects that the Department of Commerce attempted to coordinate the schedule so that the federal EIS can be considered, but the federal agency is not bound by the timelines contained in the Power Plant Siting Act and the rules adopted thereunder, and the Department has no control over the timing of the federal EIS. Moreover, there is no statute or rule that requires the Commission to defer a decision on a route permit until a federal EIS has been completed; on the contrary, the Commission is obligated to make a decision in this case within the timeframe outlined in Minn. R. 7850.2700, subp. 1. In addition, unlike other projects with which the moving parties have been involved, this is not a project for which a "joint" federal and state environmental document is being prepared. In short, the rule provides no authority for the proposition that no decision should be made in this case until the federal EIS is

⁹ Minn. R. 4410.4400, subp. 6.

¹⁰ See also Minn. R. 7850.2500, subp. 12.

completed. The Commission is not required to wait for the federal EIS before acting to grant or deny a route permit.

NoCapX and UCAN also moved on June 17, 2011, to extend the time for intervention in this matter to June 30, 2011, for landowners who recently received notice of an alternative route alignment near the intersection of US Hwy 52 and County Road 19 in Cannon Falls. No party responded to this motion, and no person had sought to intervene by the time of filing of this Order on June 30, 2011. A decision whether to re-open the intervention period would depend on the actual notice received by a particular landowner and the issues on which the landowner might seek to intervene. NoCapX and UCAN represent the interests of their members, but they do not represent either the general public or these specific landowners. Without prejudice to the rights of anyone else, the motion of these parties is denied.

K.D.S.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
600 NORTH ROBERT STREET
ST. PAUL, MN 55101

CERTIFICATE OF SERVICE

Case Title: <i>In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-La Crosse High Voltage Transmission Lines</i>	OAH Docket No. 3-2500-21181-2; PUC No. E-002/TL-09-1448
---	--

Nancy J. Hansen certifies that on the 30th day of June, 2011, she served a true and correct copy of the attached Order on Motion Regarding Final Environmental Impact Statements and Motion to Extend Intervention Deadline by serving it by U S Mail with postage prepaid, or by electronic service where indicated, addressed to the following individuals:

See attached list